

AMENDED IN ASSEMBLY APRIL 15, 1999

AMENDED IN ASSEMBLY APRIL 7, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 662

Introduced by Assembly Member Wesson

February 23, 1999

An act to add Section 675 to the Code of Civil Procedure, and to amend Sections 186.1 and ~~186.4~~ of, 186.4, and 186.8 of, to repeal Sections 186.6 and 186.7 of, and repeal and add Section 186.5 of, the Penal Code, relating to asset forfeiture, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 662, as amended, Wesson. Asset forfeiture.

(1) Existing law declares the finding of the Legislature that an effective means of punishing and deterring criminal activities of organized crime is through the forfeiture of profits acquired and accumulated as a result of criminal activities, and the intent of the Legislature that the California Control of Profits of Organized Crime Act be used by prosecutors to punish and deter only those activities.

This bill would declare instead that the Legislature finds that justice is not fully served if those convicted and punished for the activities of organized crime are permitted to utilize and enjoy the unlawful proceeds of their organized criminal profiteering activities, and the intent of the Legislature that prosecutors control the profit of organized crime activities

through the forfeiture of profits acquired and accumulated as a result of such criminal activities. The bill would declare the Legislature's intent that the California Control of Profits of Organized Crime Act be used by prosecutors to forfeit the proceeds of those activities.

(2) Existing law establishes procedures for claiming an interest in property forfeited pursuant to (1) above wherein a person is authorized to file with the superior a verified claim within a specified time period and have a hearing set in the superior court in which the underlying criminal offense will be tried. At the forfeiture hearing, the prosecutor has the burden of establishing beyond a reasonable doubt that the defendant was engaged in a pattern of criminal profiteering activity.

This bill would repeal these provisions and provide that, with respect to property described in (1) above, for which forfeiture is sought and contested, the state or local entity has the burden of proving beyond a reasonable doubt that the property is forfeitable and a judgment of forfeiture will not be entered unless a defendant is first convicted of a specified offense.

(3) Existing law establishes procedures for the forfeiture of property and proceeds acquired or received from criminal profiteering activity upon conviction of the underlying criminal offense. Existing law requires the prosecuting agency to provide notice, as specified, regarding the petition of forfeiture upon every individual who may have property interest in the proceeds.

This bill would revise these procedures by deleting certain notice provisions and certain provisions governing the forfeiture of real property while making the civil enforcement provisions governing forfeiture of assets in controlled substance cases equally applicable to the forfeiture proceedings under the California Control of Profits of Organized Crime Act. In addition, the bill would authorize the court to stay the forfeiture proceedings until the completion of the underlying criminal case, in the furtherance of justice. *In a proceeding involving real property, the bill would require the prosecuting agency, at the time of filing the petition of forfeiture, to record a lis*



pendens in each county in which the real property is situated and require the court to endeavor to discover all bona fide purchasers or encumbrancers for value and protect their interests. By increasing the duties of local officials, this bill would impose a state-mandated local program.

(4) Existing law, pursuant to the provisions of (2) above, authorizes the prosecutor to move the superior court for pendente lite orders that include an injunction to restrain the transferring, encumbering, or otherwise disposing of property and the appointment of a receiver. Existing law also provides guidelines for the trier of fact regarding findings that he or she makes with respect to property or proceeds that are the subject of the forfeiture hearing.

This bill would repeal these provisions.

(5) Existing law requires that the money forfeited or the proceeds of sale from property forfeited pursuant to the provisions described in (1) above be distributed to, among other entities, the general fund of the state or local governmental entity, whichever prosecutes.

This bill instead would require that this distribution be made subject to a specified provision of law and in accordance with an existing memorandum of understanding between the agencies. If no memorandum exists, half of the remaining proceeds would be distributed to the prosecuting agency and half to the investigating agency. To the extent that this bill would result in changes in the amount of moneys in the state fund it would constitute an appropriation.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.



Vote: ~~majority~~^{2/3}. Appropriation: ~~no~~—yes. Fiscal committee:
yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. *Section 675 is added to the Code of Civil*
2 *Procedure, to read:*

3 675. *In a proceeding involving the forfeiture of real*
4 *property pursuant to any provision of California law, the*
5 *court shall endeavor to discover all bona fide purchasers*
6 *or encumbrancers for value and protect their interests,*
7 *and may, at its discretion, order the proceeds placed in*
8 *escrow for up to an additional 60 days to ensure that all*
9 *valid claims are received and processed.*

10 SEC. 2. Section 186.1 of the Penal Code is amended to
11 read:

12 186.1. The Legislature hereby finds and declares that
13 justice is not fully served if those convicted and punished
14 for the activities of organized crime are permitted to
15 utilize and enjoy the unlawful proceeds of their organized
16 criminal profiteering activities. It is the intent of the
17 Legislature that prosecutors control the profit of
18 organized crime activities through the forfeiture of
19 profits acquired and accumulated as a result of these
20 criminal activities. It is the intent of the Legislature that
21 the “California Control of Profits of Organized Crime
22 Act” be used by prosecutors only to forfeit the proceeds
23 of those activities.

24 ~~SEC. 2.~~

25 SEC. 3. Section 186.4 of the Penal Code is amended to
26 read:

27 186.4. (a) The prosecuting agency shall, in
28 conjunction with the criminal proceeding, file a civil in
29 rem petition of forfeiture with the superior court of the
30 county in which the defendant has been charged with the
31 underlying criminal offense, which shall allege that the
32 defendant has engaged in a pattern of criminal
33 profiteering activity, including the acts or threats
34 chargeable as crimes and the property forfeitable
35 pursuant to Section 186.3.

(b) The procedures governing forfeiture of proceeds of drug trafficking offenses in Chapter 8 (commencing with Section 11469) of Division 10 of the Health and Safety Code shall be applicable to proceedings pursuant to this chapter.

(c) At the request of any party, and in the furtherance of justice, the court may stay the proceedings under this chapter until the completion of the underlying criminal case.

(d) *If the property alleged to be subject to forfeiture is real property, the prosecuting agency shall, at the time of filing the petition of forfeiture, record a lis pendens in each county in which the real property is situated. The lis pendens shall specifically identify the real property alleged to be subject to forfeiture. The judgment of forfeiture shall not affect the interest in real property of any third-party bona fide purchaser or encumbrancer for value that was acquired prior to the recording of the lis pendens.*

~~SEC. 3.~~

~~SEC. 4. Section 186.5 of the Penal Code is repealed.~~

~~186.5. (a) Any person claiming an interest in the property or proceeds may, at any time within 30 days from the date of the first publication of the notice of seizure, or within 30 days after receipt of actual notice, file with the superior court of the county in which the action is pending a verified claim stating his or her interest in the property or proceeds. A verified copy of the claim shall be given by the claimant to the Attorney General or district attorney, as appropriate.~~

~~(b) (1) If, at the end of the time set forth in subdivision (a), an interested person, other than the defendant, has not filed a claim, the court, upon motion, shall declare that the person has defaulted upon his or her alleged interest, and it shall be subject to forfeiture upon proof of the provisions of subdivision (d).~~

~~(2) The defendant may admit or deny that the property is subject to forfeiture pursuant to the provisions of this chapter. If the defendant fails to admit or deny or to file a claim of interest in the property or proceeds, the~~

1 ~~court shall enter a response of denial on behalf of the~~
2 ~~defendant.~~

3 ~~(e) (1) The forfeiture proceeding shall be set for~~
4 ~~hearing in the superior court in which the underlying~~
5 ~~criminal offense will be tried.~~

6 ~~(2) If the defendant is found guilty of the underlying~~
7 ~~offense, the issue of forfeiture shall be promptly tried,~~
8 ~~either before the same jury or before a new jury in the~~
9 ~~discretion of the court, unless waived by the consent of all~~
10 ~~parties.~~

11 ~~(d) At the forfeiture hearing, the prosecuting agency~~
12 ~~shall have the burden of establishing beyond a reasonable~~
13 ~~doubt that the defendant was engaged in a pattern of~~
14 ~~criminal profiteering activity and that the property~~
15 ~~alleged in the petition comes within the provisions of~~
16 ~~subdivision (b) or (c) of Section 186.3.~~

17 *SEC. 5. Section 186.5 is added to the Penal Code, to*
18 *read:*

19 *186.5. With respect to property for which forfeiture is*
20 *sought and is contested pursuant to Section 186.3, the*
21 *following conditions shall apply:*

22 *(a) The state or local entity shall have the burden of*
23 *proving beyond a reasonable doubt that the property is*
24 *forfeitable pursuant to this chapter.*

25 *(b) A judgment of forfeiture requires as a condition*
26 *precedent thereto, that a defendant be convicted of an*
27 *offense specified in Section 186.2 that occurred within*
28 *five years of the seizure of the property subject to*
29 *forfeiture or within five years of the date of notification*
30 *of intention to seek forfeiture.*

31 *SEC. 6. Section 186.6 of the Penal Code is repealed.*

32 ~~186.6. (a) Concurrent with, or subsequent to, the~~
33 ~~filing of the petition, the prosecuting agency may move~~
34 ~~the superior court for the following pendente lite orders~~
35 ~~to preserve the status quo of the property alleged in the~~
36 ~~petition of forfeiture:~~

37 ~~(1) An injunction to restrain all interested parties and~~
38 ~~enjoin them from transferring, encumbering,~~
39 ~~hypothecating or otherwise disposing of that property.~~

1 ~~(2) Appointment of a receiver to take possession of,~~
2 ~~care for, manage, and operate the assets and properties~~
3 ~~so that such property may be maintained and preserved.~~

4 ~~(b) No preliminary injunction may be granted or~~
5 ~~receiver appointed without notice to the interested~~
6 ~~parties and a hearing to determine that such an order is~~
7 ~~necessary to preserve the property, pending the outcome~~
8 ~~of the criminal proceedings, and that there is probable~~
9 ~~cause to believe that the property alleged in the forfeiture~~
10 ~~proceedings are proceeds or property interests~~
11 ~~forfeitable under Section 186.3. However, a temporary~~
12 ~~restraining order may issue pending that hearing~~
13 ~~pursuant to the provisions of Section 527 of the Code of~~
14 ~~Civil Procedure.~~

15 ~~(c) Notwithstanding any other provision of law, the~~
16 ~~court in granting these motions may order a surety bond~~
17 ~~or undertaking to preserve the property interests of the~~
18 ~~interested parties.~~

19 ~~(d) The court shall, in making its orders, seek to~~
20 ~~protect the interests of those who may be involved in the~~
21 ~~same enterprise as the defendant, but who were not~~
22 ~~involved in the commission of the criminal profiteering~~
23 ~~activity.~~

24 ~~SEC. 7. Section 186.7 of the Penal Code is repealed.~~

25 ~~186.7. (a) If the trier of fact at the forfeiture hearing~~
26 ~~finds that the alleged property or proceeds is forfeitable~~
27 ~~pursuant to Section 186.3 and the defendant was engaged~~
28 ~~in a pattern of criminal profiteering activity, the court~~
29 ~~shall declare that property or proceeds forfeited to the~~
30 ~~state or local governmental entity, subject to distribution~~
31 ~~as provided in Section 186.8. No property solely owned by~~
32 ~~a bona fide purchaser for value shall be subject to~~
33 ~~forfeiture.~~

34 ~~(b) If the trier of fact at the forfeiture hearing finds~~
35 ~~that the alleged property is forfeitable pursuant to~~
36 ~~Section 186.3 but does not find that a person holding a~~
37 ~~valid lien, mortgage, security interest, or interest under~~
38 ~~a conditional sales contract acquired that interest with~~
39 ~~actual knowledge that the property was to be used for a~~
40 ~~purpose for which forfeiture is permitted, and the~~

1 amount due to that person is less than the appraised value
2 of the property, that person may pay to the state or the
3 local governmental entity which initiated the forfeiture
4 proceeding, the amount of the registered owner's equity,
5 which shall be deemed to be the difference between the
6 appraised value and the amount of the lien, mortgage,
7 security interest, or interest under a conditional sales
8 contract. Upon that payment, the state or local
9 governmental entity shall relinquish all claims to the
10 property. If the holder of the interest elects not to make
11 that payment to the state or local governmental entity,
12 the property shall be deemed forfeited to the state or local
13 governmental entity and the ownership certificate shall
14 be forwarded. The appraised value shall be determined
15 as of the date judgment is entered either by agreement
16 between the legal owner and the governmental entity
17 involved, or if they cannot agree, then by a
18 court-appointed appraiser for the county in which the
19 action is brought. A person holding a valid lien, mortgage,
20 security interest, or interest under a conditional sales
21 contract shall be paid the appraised value of his or her
22 interest.

23 (e) If the amount due to a person holding a valid lien,
24 mortgage, security interest, or interest under a
25 conditional sales contract is less than the value of the
26 property and the person elects not to make payment to
27 the governmental entity, the property shall be sold at
28 public auction by the Department of General Services or
29 by the local governmental entity which shall provide
30 notice of that sale by one publication in a newspaper
31 published and circulated in the city, community, or
32 locality where the sale is to take place.

33 (d) Notwithstanding subdivision (e), a county may
34 dispose of any real property forfeited to the county
35 pursuant to this chapter pursuant to Section 25538.5 of the
36 Government Code.

37 SEC. 8. Section 186.8 of the Penal Code is amended to
38 read:

39 186.8. Notwithstanding that no response or claim has
40 been filed pursuant to Section 186.5, in all cases where

1 property is forfeited pursuant to this chapter and, where
2 necessary, sold by the Department of General Services or
3 local governmental entity, the money forfeited or the
4 proceeds of sale shall be distributed by the state or local
5 governmental entity as follows:

6 (a) To the bona fide or innocent purchaser,
7 conditional sales vendor, or holder of a valid lien,
8 mortgage or security interest, if any, up to the amount of
9 his or her interest in the property or proceeds, when the
10 court declaring the forfeiture orders a distribution to that
11 person. The court shall endeavor to discover all such
12 lienholders and protect their interests and may, at its
13 discretion, order the proceeds placed in escrow for up to
14 an additional 60 days to ensure that all valid claims are
15 received and processed.

16 (b) To the Department of General Services or local
17 governmental entity for all expenditures made or
18 incurred by it in connection with the sale of the property,
19 including expenditures for any necessary repairs, storage,
20 or transportation of any property seized under this
21 chapter.

22 (c) To the ~~general fund of the state or local~~
23 ~~governmental entity, whichever prosecutes prosecuting~~
24 ~~and investigating agencies subject to the provisions of~~
25 ~~Section 11469 of the Health and Safety Code and in~~
26 ~~accordance with an existing memorandum of~~
27 ~~understanding between the agencies. If no memorandum~~
28 ~~of understanding exists, half of the remaining proceeds~~
29 ~~shall be distributed to the prosecuting agency and half to~~
30 ~~the investigating agency.~~

31 (d) In any case involving a violation of subdivision (b)
32 of Section 311.2, or Section 311.3 or 311.4, in lieu of the
33 distribution of the proceeds provided for by subdivisions
34 (b) and (c), the proceeds shall be deposited in the county
35 children's trust fund, established pursuant to Section
36 18966 of the Welfare and Institutions Code, of the county
37 which filed the petition of forfeiture. If the county does
38 not have a children's trust fund, the funds shall be
39 deposited in the State Children's Trust Fund, established

1 pursuant to Section 18969 of the Welfare and Institutions
2 Code.

3 *SEC. 9.* Notwithstanding Section 17610 of the
4 Government Code, if the Commission on State Mandates
5 determines that this act contains costs mandated by the
6 state, reimbursement to local agencies and school
7 districts for those costs shall be made pursuant to Part 7
8 (commencing with Section 17500) of Division 4 of Title
9 2 of the Government Code. If the statewide cost of the
10 claim for reimbursement does not exceed one million
11 dollars (\$1,000,000), reimbursement shall be made from
12 the State Mandates Claims Fund.

